SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 555

PAUL BENNETT BIGMAN,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY MEMORANDUM OF PETITIONER

MARVIN M. KARPATKIN
JOHN E. LEMOULT
1345 Avenue of the Americas
New York, New York 10019

GERALD H. ROBINSON
1400 Standard Plaza
Portland, Oregon 97204

MELVIN L. WULF
American Civil Liberties Union Foundation
156 Fifth Avenue
New York, New York 10010

Attorneys for Petitioner

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This memorandum is submitted in reply to certain crucial misstatements in the Government's brief in opposition to the petition for certiorari.

On page 5 of the brief in opposition, the Government asserts that the provisions of 32 C.F.R. §§1613.11 and 1613.13 apply only to a "registrant" who "cooperates" and "presents himself for . . . registration." Yet the term "registrant" in §§1613.1 through 1613.44 obviously means "any person required to be registered" (§1613.1(a)), and does not refer only to those who complete the registration process. Nor does §1613.13 simply refer to a registrant who "cooperates." It specifically provides that the clerk should sign the registration card of a "registrant" who is unable "*or refuses*" to sign.

Finally, there is nothing in any of the regulations which requires that an individual must "present himself" *at his local board* to be registered (see §1613.1). The vast ma-

jority of Selective Service registrants are registered by high school counselors, college officials, and other individuals. See §1611.1(b). Involuntary registration is equally feasible, and far more productive than prosecution.

The Government adheres to the error of the Court below that the warning provision in §1613.16 "applies only where the person required to be registered has presented himself for registration at the local board" (PA 2-3). As is shown above, no regulation requires the registrant to appear at his local board for registration, and therefore the regulation should be read to require a warning of penalties to all recalcitrants, whether they appear or not.

The Government[1] excuses the failure to send petitioner SSS Form 392[2] on the theory that he had made a firm determination not to register. But as the petition demonstrates,[3] the purpose of Form 392 is to notify all non-registrants, whatever their degree of recalcitrance or negligence, of their duty to register. Moreover the form is clearly not limited to discharged members of the armed services. It applies equally to aliens, PA-9, and to all persons with respect to whom the local board has received "information indicating a liability for registration," PA-10. See letter of Major Maher, PA-12-13.

Finally, the Government argues that even if petitioner had been involuntarily registered he still would have had to "act within the Selective Service System" in submitting his conscientious objector claim. Such an argument is ir-

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[1] Brief in opposition, page 6, footnote 3.

[2] Special form of notice to non-registrants of duty to register.

[3] Petition, page 10, footnotes 7-8 and PA-8 through PA-13.

relevant and unfair. The question at issue is whether petitioner could have been involuntarily registered, and can assert conscientious objection to the symbolic act of registration. He is not accused of any other form of non-cooperation, and it is unreasonable to speculate as to whether he might, in the future, not comply with other provisions of the Selective Service regulations. Each conscientious objector acts according to his conscience, and while the conscience of 18 year old Bigman may have forbidden the symbolic act of personal physical registration,[4] logic does not compel the conclusion that he would have refused to submit a claim for conscientious objection at some later stage of his Selective Service history. See *Stoppleman* v. *United States*, 406 F.2d 127, 130 (1st Cir. 1969).

[4] The government's brief does not respond to our suggestion, Petition, p. 17, fn. 15, that a young man in petitioner's position, someone who is a conscientious objector to participation in war in any form, and is simultaneously a conscientious objector to participation in the process of registration for conscription, should be allowed, as a defense in a prosecution for willful refusal to register, to attempt to meet this heavy burden.

CONCLUSION

The petition for certiorari should be granted.

October, 1970

Respectfully submitted,

MARVIN M. KARPATKIN
JOHN E. LEMOULT
1345 Avenue of the Americas
New York, New York 10019

GERALD H. ROBINSON
1400 Standard Plaza
Portland, Oregon 97204

MELVIN L. WULF
American Civil Liberties Union Foundation
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